THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.27216 of 1995

Date: 07.02.2007

Between:

R. Veera Reddy Karimnagar.

... Petitioner

AND

The Chairman, I.T-Cum-Labour Court,
Godavarikhani, Karimnagar and other.

... Respondents

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.27216 of 1995

ORDER:-

This writ petition is filed questioning the award of the Industrial Tribunal-cum-Labour Court, Godavarikhani, ('the Labour Court' for short) in I.D.No.151 of 1991 dated 28-12-1993 to the extent it has denied the petitioner the benefits of past service and the back wages.

The facts, in brief, leading to the filing of this writ petition, are as follows:-

The petitioner was appointed as Conductor in the 2nd Respondent Corporation in the year 1978. At the relevant point of time, the petitioner was working in the Siddipet Depot. When the petitioner was conducting Bus No.AEZ-2154 on 25-4-1986 on Siddipet-Khata route, the A.P.S.R.T.C officials conducted a check on the bus and found certain irregularities. A charge memo was issued against the petitioner and not satisfied with the petitioner's explanation a charge sheet dated 6-5-1986 was issued, wherein five charges were framed which are extracted below:-

"1. For having failed to observe the rule 'Issue and Start'.

2. For having failed to issue tickets to a

batch of two adult passengers having boarded your bus at Nagasamudrala crossing and bound for Gatla Malyal Ex.stages 7 to 8 the requisite fare of Rs.0.75 Ps each collected at the place boarding. They are found traveling without tickets at the time of checking which constitutes misconduct under regulation 28 (x) of A.P.S.R.T.C Employees (Conduct) Regulations, 1963.

3. For having failed to issue tickets to four individuals found traveling from Nagasamudrala crossing to Gatla Malyal Ex.stages from 7 to 8 even after collecting requisite fare at the boarding place which constitutes misconduct under regulation 28 (x) of A.P.S.R.T.C Employees (Conduct) Regulations, 1963.

4. For having failed to issue tickets to a four individuals passengers found traveling without tickets even after collecting the requisite fare at the boarding place having boarded the bus at Nagasamudrala crossing to Galtla Malyala Ex.stages 7 to 8 which constitutes mis-conduct under regulation 28 (x) of A.P.S.R.T.C Employees (Conduct) Regulations, 1963.

5. For having not closed the tray number of all denomination in the S.R up to stage N.B which constitutes mis-conduct under regulation 28 (xxv) of A.P.S.R.T.C Employees (Conduct) Regulations, 1963."

The petitioner submitted his explanation which failed to satisfy the 2nd respondent, as a result of which, an Enquiry Officer was appointed to hold enquiry. On completion of the enquiry, a show-cause

notice dated 6-10-1986 proposing the punishment of removal from service was issued by the 2nd respondent to the petitioner. Considering the petitioner's explanation, the 2nd respondent passed order dated 7-11-1986, removing the petitioner from service. An appeal filed by the petitioner before the Divisional Manager concerned, the Appellate Authority was rejected by his order dated 24-9-1987. The petitioner therefore, raised an Industrial Dispute before the Labour Court, Hyderabad, which was registered as I.D.No.482 of 1988 and the same was transferred to the Labour Court, Godavarikhani and renumbered as I.D.No.151 of 1991.

The labour Court after hearing the parties on the validity of the enquiry passed order on 7-8-1992 invalidating the domestic enquiry and giving the parties an opportunity of adducing the evidence afresh before it.

During the enquiry before the Labour Court, the petitioner examined himself as D.W.1 and the 2nd respondent Management examined one Sri B. Padma Rao, Assistant Manager as M.W.1. While no documents were marked on behalf of the petitioner, exhibits M1 to M13 were marked on behalf of the 2nd respondent-Management. After a full fledged hearing of the case, the Labour Court made its award which is impugned in this writ petition.

Heard Sri H.Srinivasa Rao, learned counsel for

the petitioner and Sri Rama Rao representing learned Standing Counsel for the 2nd respondent and perused the record.

Sri Srinivasa Rao submitted that the Labour Court committed a serious error in relying upon the evidence recorded during the domestic enquiry, having invalidated the enquiry on the ground of violation of principles of natural justice. He further submitted that none of the charges was specific as to the exact place where the vehicle was checked. According to the learned counsel after the bus left Siddipet, at about 9.00 P.M., and after covering a distance of 10 K.M., from the starting point, it developed mechanical trouble on account of which the petitioner was forced to operate the fuel lift pump on the advice of the driver up to Palamakula and that at Nagasamudrala Cross Road, 10 passengers boarded the bus bound for Gatla Malyala. The petitioner collected fares from them and when he was about to issue tickets, he was again asked by the driver to operate the fuel pump which he did and that after completing that work when he started collecting the fares, checking officials checked the bus. The learned counsel submits that in the first place in the absence of any specific charge that the petitioner failed to collect the fares before crossing the relevant stage, no misconduct can be attributed to him. He also submits that even assuming that the petitioner violated 'Issue and Start' rule, the same was on account of reasons beyond his control and that either way there

was no misconduct on the part of the petitioner.

Per contra, Sri Rama Rao, learned counsel representing the Standing Counsel submitted that the Labour Court having invalidated the demotic enquiry, gave fresh opportunity to both parties to adduce evidence and on the basis of the evidence recorded and also the evidence which was available on record during the domestic enquiry, it held that the material on record is sufficient to hold the petitioner guilty of misconduct. He further submits that having exercised the discretion vested by Section 11-A of the Industrial Disputes Act 1947, the Labour Court, having regard to the nature of misconduct took a lenient view and directed reinstatement of the petitioner as a fresh conductor. The learned counsel submits that the award of the Labour Court does not suffer from any illegality warranting interference by this Court.

I have carefully considered the rival contentions in the light of the material available on record. The fact that the petitioner failed to issue tickets to three sets of passengers, namely; two passengers who boarded at Nagasumdrala crossing and bound for Gatla Malyal (Ex.stages 7 to 8) and two sets of four passengers each who were also traveling from Nagasamudrala to Gatla Malyal. The petitioner has also not disputed the collection of fares from these passengers. The only submission of the petitioner in this regard is that it is not clear from the charges as to the exact place at which the check was made. The

learned counsel in this context invited my attention to a copy of a check memo prepared at the time of check wherein stage No.7 is mentioned against the column "stage". Placing reliance on this, the learned counsel says that the very charge that the petitioner has not issued tickets having collected fares should fall to ground. Though, this argument looks attractive at the first blush, on a closer scrutiny, it has no substance. Sri A. Sanjeev Reddy, Law Officer, who was examined as M.W.1 by the 2nd respondent, deposed as under:-

> "On 25-4-1986, myself and M.V.Rathaiah, exercised a check on the bus of the petitioner, which was on "Khata" route. The bus was going from Siddipet to Khata. The time was about 9.45 p.m. The stage was 7/8. On checking, we noticed that there were (10) ten ticket less passengers."

The witness was subjected to cross-examination on this and he specifically stated that the place they have exercised the check was a village known as 'Samudrala'.

He also denied the suggestion that the check was exercised at stage No.7 and not at stage No.7/8. The witness also deposed that though in Ex.M6, Charge Memo dated 25-4-1986 stage No.7 was mentioned, the same was on account of omission of figure '8' after the figure '7'.

In the cross-examination of the petitioner he stated as under:-

> "It is true that in my Spot-Explanation I have stated that the check was exercised when the bus was in motion after attending to

> the pump of the Air-Lock. It is true that it is the duty of the conductor to collect fare and then issue tickets to the passengers, when they board the bus."

The petitioner further stated as under:

> "It is true that whenever the passengers are individuals the procedure is to collect fare from the individual passenger and to issue ticket to him and like that one after another. It is true that whatever might be the distance covered by a bus after crossing a stage, it is deemed that it has crossed the stage, and cannot be said to be at that stage"

Besides the evidence recorded by the Labour Court, the spot statements given by the passengers from whom the petitioners collected fares and failed to issue tickets were marked before the Labour Court as Exs.M2 and M3. All these passengers stated that the petitioner collected fares from them at the boarding stage itself, but he failed to issue tickets. Three of these passengers have given statements that though they demanded the petitioner to issue tickets, he had not issued tickets saying that he would issue tickets later. The statement made by Isukala Komarayya and Ankala Bhumaya is significant not only to show that the petitioner failed to issue tickets on demand, but it throws light at the actual place of check. It clearly shows that when the checking officials checked at the "outskirts of Nagasamudrala", they were not possessing tickets.

Sri Srinivasa Rao, however, argued that since the Labour Court invalidated the domestic enquiry, it erroneously relied on those statements of the passengers. I have perused the order dated 7-8-1992 of

the Labour Court, by which it has held that the domestic enquiry conducted against the petitioner was invalid. The only reason why the said order was passed was that the statements of the passengers recorded and the copy of the spot explanation of the petitioner, though said to have been enclosed to the charge sheet issued, were in fact not supplied to the petitioner and that they were not supplied even at a later stage during the domestic enquiry. It is not disputed that those very statements were marked as Exs.M2 and M3 before the Labour Court and there was no plea that those copies were not made available to the petitioner during enquiry by the Labour Court. Therefore, the submission of the learned counsel that the evidence recorded prior to the matter was considered by the Labour Court cannot be looked into has no substance. The earlier defect in the procedure was very much cured with the marking of the passengers' statements before the Labour Court and giving opportunity to the petitioner to confront the Management witness with the contents of the statements. The learned counsel in this context relied upon a judgment of the Supreme Court in **NEETA KAPLISH *v*. PRESIDING OFFICER, LABOUR COURT AND ANOTHER**[1]**.** That was a case where the complaint of the charged officer was that he was biased in favour of the Management and that he has not completely and correctly recorded the charged officer's answers in reply to the questions put by the Presenting Officer. The Labour Court found that the enquiry was not properly and fairly conducted, but however, it has

relied upon the evidence recorded in the domestic enquiry. On that factual matrix, the Supreme Court held that the Labour Court ought not to have relied upon the evidence recorded during the domestic enquiry, having held that it was not fairly and properly conducted. In view of the fact that in the present case, the only ground on which the domestic enquiry was invalidated by the Labour Court was that the statements of the passengers recorded apart from the petitioner's own spot statements were not supplied to him, and since those statements were marked during the course of enquiry before the Labour Court and were supplied to the petitioner, he cannot have any grievance on this count and the said judgment of the Supreme Court has no application to this case.

The petitioner has not disputed the authenticity of the spot statements recorded at the time of the check. No doubt Ex.M6, which is the charge memo mentions stage No.7 as the place of the check, Ex.M8 charge sheet specifically describes the place of check as stage '7/8'. Apart from the aforementioned statements of the passengers, the petitioner himself in his cross- examination admitted that he collected the fares when the bus was on the move. He also admitted that once the bus moves from the starting of the stage, the distance it covers later has no relevance and that it is his obligation to issue tickets. The Labour Court, which had the opportunity of considering this material, in my view, rightly arrived at the conclusion that the charges framed against the petitioner are proved.

It is trite that scope of judicial review in mattes relating to the departmental proceedings is limited and it has been held in a long line of cases, some of which are referred below that if there is some evidence which reasonably supports the charge of misconduct, the Courts/Tribunals would not interfere with the decision of the Primary Tribunal, namely; the Disciplinary Authority.

One of the early judgments on this aspect is **STATE OF ANDHRA PRADESH v S. SREE RAMA RAO**[2]**.** Referring to this judgment, the Supreme Court in **STATE OF A.P. v CHITRA VENKATA RAO**[3] held as under:

> "The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court. First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic Tribunal of Inquiry, the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a Court of Appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold

the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is also wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

Again, this Court in *Railway Board, New Delhi v. Niranjan Singh* (1969 3 SCR 548 = (AIR 1969 SC 966) said that the High Court does not interfere with the conclusion of the disciplinary authority unless the finding is not supported by any evidence or it can be said that no reasonable person could have reached such a finding. In *Niranjan Singh's* case (supra) this Court held the High Court exceeded its powers in interfering with the findings of the disciplinary authority on the charge that the respondent was instrumental in compelling the shutdown of an air compressor at about 8.15 a.m. on 31 May, 1956. This Court said that the Enquiry Committee felt that the evidence of two persons that the respondent led a group of strikers and compelled them to close down their compressor could not be accepted at its face value. The

General Manager did not agree with the Enquiry Committee on that point. The General Manager accepted the evidence. This Court said that it was open to the General Manager to do so and he was not bound by the conclusion reached by the Committee. This Court held that the conclusion reached by the disciplinary authority should prevail and the High Court should not have interfered with the conclusion.

The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an Appellate Court. The findings of fact reached by an inferior court or Tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a Tribunal, a writ can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. See *Syued Yakoob v K.S.Radhakrishnan* (1964) 5 SCR 64 = (AIR 1964 SC 477)".

This proposition of law is reiterated in a number of subsequent judgments of the Supreme Court, to some of which, a useful reference may be made. They are **B.C. CHATURVEDI v UNION OF INDIA & OTHERS**[4],

STATE OF TAMILNADU v S. SUBRAMANIAM [5] **and PRINCIPAL SECRETARY, GOVERNMENT OF A.P. v M.ADINARAYANA** [6]**.**

Keeping in view the aforementioned well settled legal principles, when the material on record is examined, I am satisfied that the finding of the Labour Court on the misconduct of the petitioner is based on the evidence on record. That being so, this Court, while exercising the power of judicial review would not re-appreciate the evidence or examine the sufficiency or otherwise of the same. Even otherwise from the discussion made with reference to the material on record in the foregoing part of this order, I am satisfied that the Labour Court is justified in arriving at the conclusion that the petitioner is guilty of misconduct, which he was charged with, and this finding does not suffer from any error warranting interference of this Court under Article 226 of the Constitution of India.

As regards the punishment, the law is well settled that where the Primary Tribunal, on the basis of the finding of misconduct imposes punishment, the Courts/Tribunal would not normally interfere with the quantum of punishment unless it is found that the punishment imposed is too disproportionate to the gravity of misconduct that it shocks the judicial conscience.

In **B.C. CHATURVEDI v UNION OF INDIA & OTHERS** (3 Supra), the Supreme Court held as under:

> "A review of the above legal position would establish that the disciplinary

> authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

This principle is reiterated in a number of subsequent judgments in **UNION OF INDIA AND ANOTHER V G.GANAYUTHAM**[7], **OMKUMAR vs UNION OF INDIA**[8], **V.RAMANA v APSRTC**[9], **DIVISIONAL CONTROLLER, K.S.R.T.C. (N.W.K.R.T.C.) v A.T.MANE**[10], **RAM SARAN v I.G. OF POLICE, CRPF AND ANOTHER**[11]

These principles are further restated in a very recent judgment of the Supreme Court in **STATE OF RAJASTHAN v MOHD. AYUB NAZ**[12].

I n **MAHINDRA AND MAHINDRA LTD v. N.B. NARAWADE**[13], the Apex Court, considering the scope of discretion vested in the Labour

Court/Industrial Tribunal under Section 11-A of the Industrial Disputes Act 1947 held that after introduction of Section 11-A of the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal to interfere with the quantum of punishment awarded by the Management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of the Supreme Court and it is certainly not unlimited. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being so disproportionate to the gravity of misconduct as to disturb the conscience of the Court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment.

Having considered the facts and circumstances, I am of the considered view that the Labour Court has properly and correctly exercised the discretion vested in it under Section 11-A of the Act in reducing the punishment imposed on the petitioner to that of denial of the past service and back-wages and directing the reinstatement of the petitioner as a fresh conductor. Having regard to the proof of misconduct of the petitioner involving the charge of misappropriation having been established, it cannot be said that the modified punishment would any way disturb the conscience of this Court.

On the premises aforesaid the writ petition deserves to be dismissed and accordingly the same is dismissed but without costs.

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C.V.NAGARJUNA REDDY, J

Date: 7th February 2007
Es/Mrb

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[1] **(1999) 1 SCC 517**
[2] AIR 1963 SC 1723
[3] AIR 1975 SC 2151
[4] (1995) 6 SCC 749
[5] (1996) 7 SCC 509
[6] (2004) 12 SCC 579
[7] (1997) 7 SCC 463
[8] (1995) 6 SCC 749
[9] (2005) 7 SCC 338
[10] (2005) 3 SCC 254
[11] (2006) 2 SCC 541
[12] (2006) 1 SCC 589
[13] (2005) 3 SCC 134